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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 Araya Wolde-Giorgis,)

10 Plaintiff,)

11 vs.)

12 Larry K. Christiansen, et al.,)

13 Defendants.)
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No. CIV 02-0878-PHX-DKD

ORDER

15 Pending before the Court is Plaintiff's Motion for a New Trial which "requests this court
16 to reconsider, amend, alter the judgment and set aside the judgment and allow plaintiff to have
17 a new trial in order to remedy the miscarriage of justice." Plaintiff's motion also includes a
18 renewed request for appointment of counsel. Plaintiff's motion for appointment of counsel
19 advances no new grounds and there is no demonstration that any circumstances have changed
20 since the Court last denied this request and thus the renewed request will be denied.

21 There are four grounds for which a new trial may be granted pursuant to Rule 59 of the
22 Federal Rules of Civil Procedure. A motion may be granted if it is (1) necessary to correct
23 manifest errors of law or fact upon which the judgment is based; (2) the moving party presents
24 newly discovered or previously unavailable evidence; (3) the motion is necessary to prevent
25 manifest injustice; or (4) there is an intervening change in controlling law. *Turner v. Bullington*
26 *Northern Sante Fe R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003) (citation omitted).
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1 Dr. Wolde-Giorgis' motion is supported by his affidavit which sets forth in enumerated
2 paragraphs several grounds for a new trial. The Court will address the contention of each
3 paragraph in turn.

4 ¶4 Exclusion of Witnesses

5 Plaintiff asserts that "the other major miscarriage of justice is that this court unjustly
6 excluded all of plaintiff's witnesses without any justification since plaintiff did not receive the
7 29 page 'Litigation Report Summary' since defendants did not attach [it] to defendants' answer
8 to plaintiff's interrogatories" (emphasis in original). Dr. Wolde-Giorgis sought to identify for
9 the first time on the eve of trial a number of witnesses he intended to call at trial
10 notwithstanding the Court's prior plain instruction to him that he would need to timely identify
11 all witnesses. Dr. Wolde-Giorgis sought to lay the blame for late disclosure on Defendants'
12 alleged failure to provide through discovery information to Plaintiff which would have allowed
13 him to timely disclose his witnesses. This issue was the subject of an extensive hearing before
14 trial and it was addressed via a ruling on the record as well as in the Court's Minute Entry. As
15 previously explained to Dr. Wolde-Giorgis, the responsibility for the failure to timely identify
16 his witnesses lay more appropriately at his feet than on Defendants. Even assuming for the sake
17 of this argument that Plaintiff never received the attachment to Defendants' response to
18 Plaintiff's interrogatories, this omission if it occurred was obvious and Plaintiff should have
19 exercised reasonable diligence to obtain the omitted material. Plaintiff has advanced no new
20 argument or law that was not presented and previously considered by the Court. There are no
21 grounds for a new trial on this issue.

22 ¶5 Exclusion of Plaintiff's Exhibits

23 Plaintiff next argues that the Court's exclusion of Plaintiff's exhibits violated his due
24 process and equal protection rights and that he is due a new trial because the Court excluded the
25 following exhibits: Defendants' answers to Plaintiff's interrogatories, Plaintiff's letters to
26 Defendants, Plaintiffs' Complaint, Plaintiff's medical documents, Plaintiff's list of economics
27 faculty members, and Plaintiff's own sworn affidavits.

1 With respect to Plaintiff's motion to admit Defendants' responses to his interrogatories,
2 the Court sustained Defendants' objection pursuant to Federal Rule of Evidence 403 upon the
3 Court's balancing of the risk of confusion and unnecessary delay against the probative value of
4 the "wholesale" introduction of these documents. The Court's evidentiary ruling on these
5 documents was without prejudice to Plaintiff seeking to move their admission upon a proper
6 foundation, but Plaintiff never made any subsequent attempt.

7 It should be noted that the Court was mindful that Dr. Wolde-Giorgis was appearing pro
8 se and that it did on numerous occasions provide Plaintiff with remedial information including
9 basic presentations on the rules of evidence and civil procedure. The Court also advised
10 Plaintiff well before trial that he would be wise to consult Professor Imwinkelried's treatise
11 "Evidentiary Foundations". The Court took these steps in part because it believed that an
12 individual with Plaintiff's record of academic achievement and advanced academic degree
13 would be able to educate himself if given the tools. Sadly, it is this Court's conclusion that Dr.
14 Wolde-Giorgis either does not listen well or he only hears what he wants to hear because the
15 pretrial and trial record of this case is chock-full of incidents of Dr. Wolde-Giorgis' failure to
16 follow the Rules of Evidence, the Rules of Civil Procedure and the Court's explicit Orders.

17 Defendants objected to the admission of Dr. Wolde-Giorgis' efforts to admit his letters
18 to others on hearsay grounds and Plaintiff articulated no exception to the hearsay bar. Thus,
19 these documents were properly excluded.

20 Plaintiff sought to admit his Complaint and Amended Complaint and these documents
21 were excluded on the basis of a Federal Rule of Evidence 403 analysis because of the Court's
22 fear that they contained superfluous and confusing information (including the inclusion of
23 claims and parties which had been dismissed). Thus the risk of prejudice outweighed their
24 probative value.

25 The Court excluded Plaintiff's medical documents and records pursuant to Defendants'
26 foundation objection. Plaintiff provided no foundation for these documents notwithstanding his
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1 apparent understanding of the concept of evidentiary foundations which was demonstrated by
2 his submission of authenticated educational records.

3 With respect to Plaintiff's motion to admit as evidence a list he apparently created to
4 show that no black full-time economics teacher was ever hired in thirty years, the Court
5 sustained Defendants' foundation objection because no foundation for this document was
6 offered. The Court did not restrict Plaintiff's opportunity to develop this evidence through the
7 testimony of any witness at trial.

8 Dr. Wolde-Giorgis' Affidavits were excluded pursuant to a hearsay objection and no
9 exception to the hearsay rule was proffered. The Court explained to Plaintiff during trial that
10 these affidavits were out-of-court statements to which the rule against hearsay applied. No
11 exception pursuant to Rule 801(d)(1) was presented.

12 ¶6 Defendants' Exhibits

13 Plaintiff contends that he is entitled to a new trial because the interview score sheets
14 which were admitted as business records during the presentation of Defendants' case contain
15 the score sheets of two individuals Plaintiff alleges he did not know about prior to trial. He
16 alleges "willful and malicious deception by defendants." The record does not support Plaintiff's
17 accusation. Any failure to know about these individuals prior to trial is due to Plaintiff's lack
18 of due and reasonable diligence and not any deception on the part of Defendants. The Court has
19 repeatedly addressed this issue with Plaintiff and no new arguments or facts have been
20 presented.

21 ¶7 Jury's Request for a List of Exhibits

22 Plaintiff contends that the Court's response to the jury's question during deliberations
23 entitles him to a new trial. The jury asked for "a form with each exhibit listed by # &
24 description" to which the Court responded, "We are unable to provide you with the form you
25 request." The only list of exhibits available to the Court at the time of the jury's request was
26 Plaintiff's and Defendants' lists of exhibits. Such lists would have informed the jury about
27 exhibits not admitted into evidence which would have been contrary to the Rules of Evidence
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1 and the evidentiary rulings excluding those exhibits. Moreover, the Court did not want to delay
2 the jurors' deliberations while the requested list was prepared. The jury had before them the
3 exhibits admitted into evidence and they were not so voluminous or unmanageable such that
4 failure to provide the requested list constituted manifest error so as to warrant a new trial.

5 ¶8 Plaintiff's Contention that All Defense Witnesses Lied

6 Plaintiff next argues that "almost all of the witnesses (i.e. defense witnesses) lied under
7 oath." Each of the alleged incidents of lying which Plaintiff cites in his motion was played out
8 before the jury and thus the verdict reflects the jury's consideration of the witnesses' testimony
9 and credibility. Dr. Wolde-Giorgis had a full opportunity to confront and cross-examine all
10 witnesses. The record does not support setting aside the jury's verdicts on this issue.

11 ¶9 Incompetent Juror(s) and Exclusion of Juror

12 Dr. Wolde-Giorgis contends that "some of the jurors were incompetent." He complains
13 about a particular juror's ability to read and write English. The Court conducted an on-the-
14 record inquiry of this juror's capacity to serve as a juror and it was well satisfied that this juror
15 was competent to serve. This juror said he had a problem with English because he never went
16 to school but upon the Court's inquiry he informed the Court that he had spoken English for
17 more than 30 years and that he had "pretty much" been able to understand the proceedings
18 which had transpired thus far. The Court's interaction with this juror gave the Court the clear
19 impression that the juror was humbly admitting his lack of formal schooling but that he was
20 fully able to comprehend English. Moreover, Dr. Wolde-Giorgis did not inquire further with
21 this juror on this point when he was given the opportunity to do so. Dr. Wolde-Giorgis also
22 contends that the jury instructions, which he approved, were "complex and confusing and even
23 misleading" and that "most of the other members or at least some of them do not and did not
24 understand the jury instructions." Plaintiff offers no explanation or example on this point and
25 the record contains no hint that the jury was confused or misled.

26 Finally, Dr. Wolde-Giorgis asks for a new trial because Defendants exercised a
27 peremptory challenge to exclude a potential juror with a masters degree in economics who was
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1 presently employed as a bank teller. Plaintiff contends that she was struck because of her race.
2 Plaintiff raised this issue at trial and the Court conducted a *Batson* examination of this strike and
3 was satisfied, for the reasons articulated on the record, that Defendants could legitimately
4 choose to exercise a peremptory strike against this juror.

5 ¶10 Contention that Defense Counsel Lied in Closing Argument

6 Dr. Wolde-Giorgis states that "[t]he attorney for the defendants not only lied when she
7 indicated that most of the plaintiff's 25 years teaching experience is outside of the United States
8 when in fact 14 years out of those 25 years were in the United States. Ms. Blumenreich was not
9 limited to misleading the jury in that regard, she was telling the jury that plaintiff is a foreigner
10 who does not belong here!" The location of Dr. Wolde-Giorgis' training and experience was
11 in evidence and the Court did not perceive that counsel for Defendants was seeking to inflame
12 unfair biases. Defense counsel's closing argument did not deprive Plaintiff of a fair trial as he
13 alleges.

14 ¶11 Interrogatory Responses Prepared by the Attorney for Maricopa County Community
15 Colleges

16 Dr. Wolde-Giorgis contends that he should be granted a new trial because the attorney
17 for the Maricopa County Community Colleges who prepared certain answers to interrogatories
18 did "'not know' where she got the information from." Plaintiff does not explain how this entitles
19 him to a new trial. In any event, the answers to interrogatories themselves were never admitted
20 into evidence and thus there is no basis for according a new trial on this basis.

21 Conclusion

22 The Court has addressed each of Plaintiff's arguments for a new trial and finds that none
23 are of merit. Plaintiff had his "day in court" before a properly composed jury of our community.
24 Dr. Wolde-Giorgis took the stand and had the full opportunity to present his case. To the extent
25 that he complains that his other evidence was limited, that limitation was of his own making.
26 There was no error or injustice requiring a new trial. The Court will not squelch the unanimous
27 voice of this jury.

1 **IT IS ORDERED DENYING** Plaintiff's Motion for a New Trial [Doc. #107].

2 **IT IS FURTHER ORDERED DENYING** Plaintiff's Motion for Ruling as MOOT
3 [Doc. #115].

4 DATED this 31st day of March, 2006.

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David K. Duncan
United States Magistrate Judge